IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

COMPANY PETITION NO. 154 OF 1998

Smt.Roopa R. Sheth ....Petitioners
vs.
Aldrich Pharmaceuticals ...Respondents

Sachin Masurkar for the Petitioners.
None for the respondents.

CORAM: S.C. DHARMADHIKARI, J.

10th January, 2007.

P.C :-

1. Heard Mr.Masurkar, appearing for the petitioner.

2. Mr.Masurkar pointed out that a copy of this Company Petition together with its annexures was duly served as per the rules upon the Respondent company, but, the packets were returned unserved. Thereafter subsequent attempts to serve did not yield any positive result. Consequently, application for substituted service was made which was granted by this court. This court directed that service be

effected by publishing an advertisement in daily Navshakti and Free Press Journal. The said advertisement has been duly published in the aforesaid newspapers and an affidavit has been filed to that effect on 3.10.2006. I have perused the affidavit proving service and the advertisement/public notice published in Free Press Journal and Navshakti on 21.3.2005.

3 None have appeared for the respondent company when the matter was called out. I am satisfied that the Respondent company has been duly served.

4. Mr.Masurkar, then contends that the claim in the present petition for winding up arises out of a loan which was advanced by cheque. The cheque of Rs.9 lacs has been encashed by the company. In return the company made part payment of Rs.1,50,000/- which was adjusted leaving a balance of Rs.7,50,000/-.

5. Mr. Masurkar, points out that the company thereafter issued post-dated cheques, details of which are set out in paragraph 6 of the Company

Petition. However, the company requested that the cheques should not be presented because of financial difficulties and the Respondents would make an attempt to clear the dues. A meeting was arranged pursuant to this communication and it was agreed that the amount would be paid and appropriate concession in the interest would be considered.

6. However, despite agreeing to make payment and admitting the liability in that behalf, the company has failed to pay the sum of Rs.7,50,000/-. It is in these circumstances, that the statutory notice was issued and the only reply thereto is that the company is aggrieved by the calculation of interest and requested that the calculation be corrected. Mr. Masurkar, contends that despite readiness and willingness of the petitioner to do so, the outstanding principal sum was not paid. That is how the present petition has been filed.

7. In all fairness, Mr.Masurkar, pointed out that after the petition was admitted, the company has paid a sum of Rs.3,75,000/- leaving a sum of Rs.3,75,000/-

as principal which is due and payable alongwith interest as per the particulars of claim.

8. There is no affidavit-in-reply filed by the company despite it being served.

9. Section 434(1)(a) of the Companies Act, states, that the company shall be deemed to be unable to pay its debt, after it is indebted in the sum specified therein and a notice has been delivered or served at its registered office by Registered Post or otherwise a demand is made requiring the company to pay the sum so due. If the company neglects to pay the sum or to secure or compound for it to the reasonable satisfaction of the Creditor, then the company is deemed to be unable to pay its debt.

10. Section 433(e) states that a company may be wound up by the court if it is unable to pay its debt. Thus, a discretion is conferred upon the court to direct winding up of a company after it is brought to its notice that it is unable to pay its debt.

11. From the materials which are produced so also the averments in the Company Petition being not denied, I am satisfied that this is a fit case for exercising my discretion under Section 433 of the Companies Act. Further, the company having paid some amount, after the petition was admitted is an indication of the fact that it has not denied its liability all throughout. It has not only forwarded post-dated cheques but before they could be presented, the Company requested for time to make payment. The company having not paid the amount, the aforesaid conclusion can be drawn safely. It is in these circumstances, that I am allowing the Company Petition. This is a case where even the averments pertaining to the commercial insolvency of the company and its liabilities for outweighing its assets, remain uncontroverted.

12. In the result, the Company Petition is allowed. The company Aldrich Pharmaceuticals is directed to be wound-up. The Official Liquidator is appointed liquidator of the company and he shall be at liberty to exercise his powers under the Companies

Act.

. C.C. expedited.

(S.C.DHARMADHIKARI, J)